

ORIGINAL

Filed

NOV 30 2012

RICHARD W. WIEKING  
 CLERK, U.S. DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN JOSE

1 Alicia R. Kennon (State Bar No. 240569)  
 2 Eugene Zinovyev (State Bar No. 267245)  
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Attorneys for Defendant WESTERN ASSOCIATION OF SCHOOLS AND COLLEGES

## UNITED STATES DISTRICT COURT

## NORTHERN DISTRICT OF CALIFORNIA - SAN JOSE DIVISION

11 THE INSTITUTE OF MEDICAL  
 12 EDUCATION, INC.,

Plaintiff,

v.

14 WESTERN ASSOCIATION OF  
 15 SCHOOLS AND COLLEGES, and DOES  
 16 1 THROUGH 10 INCLUSIVE,

Defendants.

CASE NO. CV11-05755 PSG

DEFENDANT WESTERN ASSOCIATION  
 OF SCHOOLS AND COLLEGES  
 ANSWER TO PLAINTIFF'S FIRST  
 AMENDED COMPLAINT

Complaint Filed: 11/30/11

[Assigned for All Purposes to Magistrate Judge Paul  
 Singh Grewal in Courtroom 5, 4<sup>th</sup> Floor]

Discovery Cutoff: None Set  
 Motion Cutoff: None Set  
 Trial Date: None Set

19 COMES NOW Defendant WESTERN ASSOCIATION OF SCHOOLS AND  
 20 COLLEGES and in response to Plaintiff's First Amended Complaint admits, denies,  
 21 and/or alleges the following:

NATURE OF ACTION

23 1. In answering paragraph 1 of Plaintiff's Complaint, Defendant admits that this is  
 24 an action for damages against WASC and Does 1 through 10. Defendant, however,  
 25 denies the remaining allegations contained within paragraph 1 of Plaintiff's complaint.

///

///

FAXED

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## THE PARTIES

2. In answering paragraph 2 of Plaintiff's Complaint, Defendant denies the allegations contained therein.

4       3. In answering paragraph 3 of Plaintiff's Complaint, Defendant admits the  
5 allegations contained therein.

## **JURISDICTION AND VENUE**

7       4. In answering paragraph 4 of Plaintiff's Complaint, Defendant denies the  
8 allegations contained therein.

## **FACTUAL BACKGROUND**

10       5. In answering paragraphs 5 through 10 of Plaintiff's Complaint, Defendant lacks  
11 sufficient knowledge and information from which to admit or deny the allegations  
12 contained therein and on that basis denies same.

13       6. In answering paragraph 11 of Plaintiff's Complaint, Defendant lacks sufficient  
14 knowledge and information from which to admit or deny the allegations contained therein  
15 and on that basis denies same.

16       7. In answering paragraph 12 of Plaintiff's Complaint, Defendant lacks sufficient  
17 knowledge and information from which to admit or deny the allegations contained therein  
18 and on that basis denies same.

19       8. In answering paragraph 13 of Plaintiff's Complaint, Defendant lacks sufficient  
20 knowledge and information from which to admit or deny the allegations contained therein  
21 and on that basis denies same.

22 9. In answering paragraph 14 of Plaintiff's complaint, Defendant admits the  
23 allegations contained therein.

24 10. In answering paragraph 15, lines 4-5, of Plaintiff's Complaint Defendant admits  
25 that a letter dated September 23, 2010 was sent to IME, but lacks sufficient information  
26 or knowledge regarding the remaining allegations contained therein and on that basis  
27 denies same. In answering lines 5, beginning with "While a number..." through line 8,

28 //

1 Defendant lacks sufficient knowledge and information from which to admit or deny the  
 2 allegations contained therein and on that basis denies same.

3       11. In answering paragraph 16 of Plaintiff's Complaint, Defendant denies the  
 4 allegations contained therein.

5       12. In answering paragraph 17 of Plaintiff's Complaint, Defendant lacks sufficient  
 6 knowledge and information from which to admit or deny the allegations contained therein  
 7 and on that basis denies same.

8       13. In answering paragraph 18 of Plaintiff's Complaint, Defendant lacks sufficient  
 9 knowledge and information from which to admit or deny the allegations contained therein  
 10 and on that basis denies same.

11       14. In answering paragraph 19 of Plaintiff's Complaint, Defendant lacks sufficient  
 12 knowledge and information from which to admit or deny the allegations contained therein  
 13 and on that basis denies same.

14       15. In answering paragraph 20 of Plaintiff's Complaint, Defendant denies the  
 15 allegations contained therein.

16       16. In answering paragraph 21 of Plaintiff's Complaint, Defendant lacks sufficient  
 17 knowledge and information from which to admit or deny the allegations contained therein  
 18 and on that basis denies same.

19       17. In answering paragraph 22 of Plaintiff's Complaint, Defendant lacks sufficient  
 20 knowledge and information from which to admit or deny the allegations contained therein  
 21 and on that basis denies same.

22       18. In answering paragraph 23 of Plaintiff's Complaint, Defendant denies the  
 23 allegations contained therein.

24       19. In answering paragraphs 24-28 of Plaintiff's Complaint, Defendant lacks  
 25 sufficient knowledge and information from which to admit or deny the allegations  
 26 contained therein and on that basis denies the allegations contained therein.

27       20. In answering paragraph 29 of Plaintiff's Complaint, Defendant denies the  
 28 allegations contained therein.

1        21. In answering paragraph 30 of Plaintiff's Complaint, Defendant denies the  
2 allegations contained therein.

## **FIRST CAUSE OF ACTION**

## **Denial of Common Law Due Process**

5       22. In answering paragraph 31 of Plaintiff's Complaint, Defendant incorporates the  
6 preceding admissions and denials contained within paragraphs 1-21 as though fully set  
7 forth herein.

8       23. In answering paragraphs 32-38, Defendant denies each and every allegation  
9 contained therein.

## **SECOND CAUSE OF ACTION**

## **Breach of Contract**

12       24. In answering paragraph 39 of Plaintiff's Complaint, Defendant incorporates the  
13 preceding admissions and denials contained within paragraphs 1-23 as though fully set  
14 forth herein.

15       25. In answering paragraphs 40-43, Defendant denies each and every allegation  
16 contained therein.

### **THIRD CAUSE OF ACTION**

## **Breach of the Implied Covenant of Good Faith & Fair Dealing**

19       26. In answering paragraph 44 of Plaintiff's Complaint, Defendant incorporates the  
20 preceding admissions and denials contained within paragraphs 1-25 as though fully set  
21 forth herein.

22        27. In answering paragraphs 45-47 of Plaintiff's Complaint, Defendant denies  
23 each and every allegation contained therein.

## **FOURTH CAUSE OF ACTION**

## **Intentional Interference with Contract (Student Enrollment Agreements)**

26 28. In answering paragraph 48 of Plaintiff's Complaint, Defendant incorporates the  
27 preceding admissions and denials contained within paragraphs 1-27 as though fully set  
28 forth herein.

1        29. In answering paragraphs 49-54 of Plaintiff's Complaint, Defendant denies  
2 each and every allegation contained therein.

## **FIFTH CAUSE OF ACTION**

## **Negligent Interference with Prospective Business or Economic Advantage**

5       30. In answering paragraph 55 of Plaintiff's Complaint, Defendant incorporates the  
6 preceding admissions and denials contained within paragraphs 1-29 as though fully set  
7 forth herein.

8       31. In answering paragraphs 56-59, Defendant denies each and every allegation  
9 contained therein.

## **SIXTH CAUSE OF ACTION**

## Promissory Estoppel

12       32. In answering paragraph 60, Defendant incorporates the preceding admissions  
13 and denials contained within paragraphs 1-31 as though fully set forth herein.

14       33. In answering paragraphs 61-66, Defendant denies each and every allegation  
15 contained therein.

## **AFFIRMATIVE DEFENSES**

## **FIRST AFFIRMATIVE DEFENSE**

18 34. Defendant is informed and believes, and on that basis alleges that the  
19 Complaint, in whole or in part, fails to state a claim for which relief can be granted.

## **SECOND AFFIRMATIVE DEFENSE**

21       35. Defendant is informed and believes, and on that basis alleges that the  
22 Complaint, and each and every claim contained therein, is barred by the applicable  
23 statute of limitation.

## THIRD AFFIRMATIVE DEFENSE

25 36. Defendant is informed and believes, and on that basis alleges that Plaintiff has  
26 failed to mitigate their damages with respect to any and all damages proximately and/or  
27 actually caused by the actions or incidents underlying the Complaint.

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## FOURTH AFFIRMATIVE DEFENSE

2 37. Defendant is informed and believes, and on that basis alleges that Plaintiff's  
3 Complaint is barred by the doctrine of laches, estoppel, waiver and/or unclean hands.

## **FIFTH AFFIRMATIVE DEFENSE**

5       38. Defendant is informed and believes, and on that basis alleges that any and all  
6       injuries, losses, or damages, if any, were the direct and proximate result of an  
7       unavoidable incident, act of God, or resulted from natural causes, without fault or liability  
8       on the part of this answering Defendant.

## SIXTH AFFIRMATIVE DEFENSE

10       39. Defendant is informed and believes, and on that basis alleges that Plaintiff has  
11 no standing to bring any action against this responding Defendant.

## **SEVENTH AFFIRMATIVE DEFENSE**

13 40. Defendant is informed and believes, and on that basis alleges that Plaintiff's  
14 action is barred by the failure to join in a timely fashion, indispensable and/or necessary  
15 parties to the action

## **EIGHTH AFFIRMATIVE DEFENSE**

17 41. Defendant is informed and believes, and on that basis alleges that the  
18 underlying agreements are unenforceable due to a lack of consideration.

## **NINTH AFFIRMATIVE DEFENSE**

20       42. Defendant is informed and believes, and on that basis alleges that Plaintiff's  
21 claims are barred due to mistake and/or fraud concerning the terms of the underlying  
22 agreements.

## **TENTH AFFIRMATIVE DEFENSE**

24        43. Defendant is informed and believes, and on that basis alleges that the  
25 agreements referred to in the Complaint are unenforceable and/or void as against public  
26 policy.

27 | //

28 | //

## **ELEVENTH AFFIRMATIVE DEFENSE**

2 44. Defendant is informed and believes, and on that basis alleges that Plaintiff has  
3 waived their right to enforce the underlying agreements by breaching the terms of those  
4 agreements.

## **TWELFTH AFFIRMATIVE DEFENSE**

6 45. Defendant is informed and believes, and on that basis alleges that the  
7 underlying agreements have been rescinded.

## THIRTEENTH AFFIRMATIVE DEFENSE

9       46. Defendant is informed and believes, and on that basis alleges that Plaintiff has  
10      acted so as to frustrate the purpose of the underlying agreements.

## FOURTEENTH AFFIRMATIVE DEFENSE

12        47. Defendant is informed and believes, and on that basis alleges that this  
13 responding Defendant has satisfied its obligations pursuant to the underlying  
14 agreements.

## **FIFTEENTH AFFIRMATIVE DEFENSE**

16 48. Defendant is informed and believes, and on that basis alleges that Plaintiff are  
17 estopped by their own acts and conduct from pursuing the claims alleged in the  
18 Complaint.

## SIXTEENTH AFFIRMATIVE DEFENSE

20        49. Defendant is informed and believes, and on that basis alleges that at all times  
21 relevant, its conduct was justified with regard to the claims alleged in the Complaint.

## SEVENTEENTH AFFIRMATIVE DEFENSE

23 50. Plaintiff has failed to state facts sufficient to give rise to a claim against  
24 Defendant for punitive damages.

## **EIGHTEENTH AFFIRMATIVE DEFENSE**

26 || 51. This action is barred for lack of subject matter jurisdiction.

27 | / / /

28 | //

## NINETEENTH AFFIRMATIVE DEFENSE

2 52. This action is barred because Plaintiff has failed to exhaust the administrative  
3 remedies provided to it through Defendant's organization or provided by law.

## **TWENTIETH AFFIRMATIVE DEFENSE**

5           53. This action is barred because it is not ripe for decision or because the action  
6 is now moot.

## **TWENTY-FIRST AFFIRMATIVE DEFENSE**

8       54. Plaintiff's complaint is barred by the doctrine of res judicata or collateral  
9 estoppel.

## **TWENTY-SECOND AFFIRMATIVE DEFENSE**

1 55. Plaintiff's action is barred because the alleged wrongful acts or omissions are  
2 based on the exercise of a discretionary duty or discretionary function on the part of the  
3 public defendant. Accordingly, defendant is immunized from liability as a matter of law.

## **TWENTY-THIRD AFFIRMATIVE DEFENSE**

5 56. Plaintiff was provided with adequate and due notice by Defendant and the  
6 U.S. Department of Education.

## **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

18        57. Defendant presently has insufficient knowledge or information upon which to  
19 form a belief as to whether Defendant may have any additional affirmative defenses to  
20 the Complaint and/or all of the claims stated therein. Accordingly, Defendant hereby  
21 reserves its right to assert additional affirmative defenses in the event that further  
22 development, events and/or discovery indicate such assertion would be appropriate.

23 || WHEREFORE, Defendant prays for relief as follows:

24 (a) That Plaintiff take nothing against this answering Defendant;  
25 (b) That this answering Defendant have and recover its costs of suit;  
26 (c) For such other and further relief as the Court may deem just and proper.

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28 | //

1  
2 **JURY DEMAND**  
3

4  
5 Defendant hereby demands a trial by jury of all issues so triable.  
6

7 DATED: November 30, 2012  
8

9 WOOD, SMITH, HENNING & BERMAN LLP  
10

11 By:   
12

13 ALICIA R. KENNON  
14 EUGENE ZINOVYEV  
15

16 Attorneys for Defendant WESTERN  
17 ASSOCIATION OF SCHOOLS AND COLLEGES  
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**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF CONTRA COSTA**

I am employed in the County of Contra Costa, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 1401 Willow Pass Road, Suite 700, Concord, California 94520-7982.

On November 30, 2012, I served the following document(s) described as  
**DEFENDANT WESTERN ASSOCIATION OF SCHOOLS AND COLLEGES ANSWER  
TO PLAINTIFF'S FIRST AMENDED COMPLAINT** on the interested parties in this action  
as follows:

**SEE ATTACHED LIST**

**BY MAIL:** I placed true copies of the foregoing document(s) enclosed in sealed envelopes addressed as shown on the Service List. I am "readily familiar" with Wood, Smith, Henning & Berman's practice for collecting and processing correspondence for mailing with the United States Postal Service. Under that practice, it would be deposited with the United States Postal Service that same day in the ordinary course of business. Such envelope(s) were placed for collection and mailing with postage thereon fully prepaid at Concord, California, on that same day following ordinary business practices.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on November 30, 2012, at Concord, California.

Sheryl A. Miller

## **SERVICE LIST**

**The Institute of Medical Education, Inc. v. Western Association of Schools and Colleges, et al.**  
**Case No. USDC-N (SJ) - CV11-05755 LHK**

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